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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO	
09/457,847	12/09/1999	TOAN TRINH	7114	8139	
21132	9590 05/21/2002 ER & GAMBLE COM	EXAMINER			
INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161			MOORE, MARGARET G		
6110 CENTER	R HILL AVENUE	ART UNIT	PAPER NUMBER		
CINCINNATI	, OH 45224		1712	6	
		DATE MAILED: 05/21/2002			

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. D9/457.847 TRINH ET AL. Examiner  Art Unit Margaret S. Moore  7.72  Period for Rephy  As HORTEMED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MALING DATE of this communication appears on the cover sheet with the correspondence address —  Period for Rephy  As HORTEMED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MALING DATE OF THIS COMMUNICATION.  THE MALING DATE OF THIS COMMUNICATION.  1 No Period for many be available under the provisions of 3 CPR 1.13(s), in no event, however, may a reply be tensely filed where the state of the provisions of 3 CPR 1.13(s), in no event, however, may a reply be tensely filed where the state of the provision of 3 CPR 1.13(s), in no event, however, may a reply be tensely filed where the provisions of 3 CPR 1.13(s), in no event, however, may a reply be tensely filed where the provision of the	-					<u>Mc</u>
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2a)  This action is FINAL. 2b)  This action is non-final.  3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)  Claim(s)  16 56 is/are pending in the application.  4a) Of the above claim(s)  is/are withdrawn from consideration.  5)  Claim(s)  is/are allowed.  6)  Claim(s)  is/are rejected.  7)  Claim(s)  is/are objected to.  8)  Claim(s)  10 56 are subject to restriction and/or election requirement.  Application Papers  9)  The specification is objected to by the Examiner.  10)  The drawing(s) filed on  is/are: a  accepted or b  objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  11)  The proposed drawing correction filed on  is: a  approved b  disapproved by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12)  The oath or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a)  All b)  Some  C  None of:  1.  Certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rula 17.2(a)).  *See the attached detailed Office action for a list of the certified copies not received.  14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  a)  The translation of the foreign language provisional application has been received.  15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 120 and/or 121.  Attachment(s)  History Rate Rate Application (PTO-152)	THE N - Exten after S - If the - If NO - Failur	MAILING DATE OF THIS COMMUNICATIONS of time may be available under the provisions of SIX (6) MONTHS from the mailing date of this community period for reply specified above is less than thirty (30) of period for reply is specified above, the maximum statute to reply within the set or extended period for reply will apply received by the Office later than three months after	ATION.  7 CFR 1.136(a). In no ever cation.  lays, a reply within the statut ory period will apply and will	it, however, may a reply be tir ory minimum of thirty (30) day expire SIX (6) MONTHS from exting to become ABANDONE	mely filed ys will be considered time n the mailing date of this o ED (35 U.S.C. § 133).	ily. communication.
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1. The reply filed on 2/15/02 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): the election of species requirement is incomplete. See 37 CFR 1.111. Since the above-mentioned reply appears to be bona fide, applicant is given ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

2. Claim 1 is generic to a plurality of disclosed patentably distinct species comprising the various components (A) *embraced* by the various fiber lubricants, shape retention polymers, lithium salts and mixtures thereof as described in the specification and in the various claims. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. The Examiner acknowledges applicants' Election of Species response in the response filed 2/15/02. In this they state that the action alleges that claim 1 is generic to a plurality of disclosed patentably distinct species, namely that component (A) is recited as being selected from the group consisting of fiber lubricants, shape retention polymers, lithium salts and mixtures thereof. Applicants then state that they have been instructed to elect one of these species. However a closer reading of the election requirement shows that the claim 1 is generic to the various components (A) *embraced by* the various groups listed. The Examiner acknowledges that the election requirement may not have been clearly stated; however, the election is intended to be between the various components that are embraced by the groups listed rather than the generic

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groups themselves. For instance, for the shape retention genus, this would include the polymers of claim 13, having a specific glass transition requirement, the polymers of claim 16, having a specific hydrophilic/hydrophobic requirement, the polymers of claim 20, a siloxane having specific properties, and each of the polymers of claims 23 to 25, having their own specific formulas. Each of these are patentably distinct species of the subgenus shape retention polymers.

- 4. Applicants traversed the grounds for the rejection noting that there are only three members in the Markush Group of component (A) and they do not believe it would be a serious burden to examine all members. The Examiner does not agree. Each of the three members of the Markush Group in (A) are in fact each a subgenus which include many members. Not only would it impose a serious burden on the Examiner to search for each polymer, since the type of polymer determines the search area (for instance silicone polymers would be searched in a different area from unsaturated polymers) but it would impose a serious burden to examine and prosecute each polymer, since they are patentably distinct inventions and the patentability of, for instance, the species in claim 20 is independent from the patentability of the species of claim 23.
- 5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret G. Moore whose telephone number is 703-308-4334. The examiner can normally be reached on Tues. and Thurs. 6:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Dawson can be reached on 703-308-2340. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9311 for regular communications and 703-872-9310 for After Final communications.

Margaret G. Moore Primary Examiner

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